

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

ANTOINE WAINWRIGHT,

Plaintiff,

vs.

EUGENE McADORY, et al.,

Defendants.

Civil Case No. 04-183-GPM

REPORT AND RECOMMENDATION

FRAZIER, Magistrate Judge:

Before the Court is defendant Doughty's motion to dismiss for failure to effectuate timely service (Doc. No. 77). Plaintiff's response was due within 30 days. The motion is unopposed.

Rule 4(m) generally requires service of process within 120 days, although the time for service may be extended for an appropriate period. On December 29, 2006, the deadline for completing service was extended to February 12, 2007. Defendant Doughty was served on March 12, 2007. Due to the late service, this defendant did not have an opportunity to attend plaintiff's deposition and pose questions. Doughty notes that the applicable statute of limitations expired long before service was accomplished.

Pursuant to Rule 12(b)(5), a pleading may be dismissed for insufficient service of process. The absence of a response may be construed as an admission that the motion has merit. SDIL-LR 7.1(c).

IT IS RECOMMENDED that defendant Doughty's motion to dismiss (Doc. No. 77) be GRANTED. Plaintiff's remaining claim against defendant Doughty should be dismissed without prejudice for lack of timely service of process. If this recommendation is adopted, no claims will remain for decision.

SUBMITTED: June 26, 2007 .

s/Philip M. Frazier

PHILIP M. FRAZIER

UNITED STATES MAGISTRATE JUDGE